



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED : 16.12.2021

CORAM :

THE HONOURABLE MR.JUSTICE G.R.SWAMINATHAN

Crl.O.P(MD)Nos.11751, 11755 and 12748 of 2021
and

Crl.M.P. (MD)Nos.6014, 6016, 6020, 6532 and 6533 of 2021

Crl.O.P(MD)No.11751 of 2021:-

1.Romalt Terric Pinto Fernando
2.Maria Gracious Smilin

... Petitioners

Vs.

1.The State rep by
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
(Crime No.8 of 2019)

2.E.Jean Prabhu

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in C.C.No.5 of 2021 on the file learned Judicial Magistrate No.I, Thoothukudi and quash the same as against the petitioners.

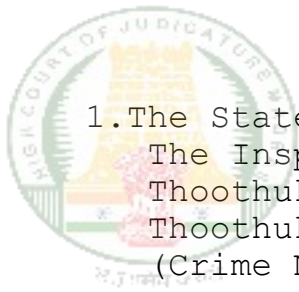
For Petitioners : Mr.R.Anand
For Respondents : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor for R1.
R2 - Party-in-person

Crl.O.P(MD)No.11755 of 2021:-

1.Farry @ Peter Farry Vaiz
2.Matilda
3.R.Selvakumar @ Selvakumar Pavia
4.Teena @ Christina Emer Rayen
5.A.Maria Garacious Smilin
6.Romalt Terric Pinto Feranando
7.Vasanthi @ Fernando Mary Jacqueline Vasanthi
8.Juliet @ Mary Roselin Juliet
9.M.Sharmila
10.Renso @ P.Judges Renso Fernando

... Petitioners

Vs.



1.The State rep by
The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
(Crime No.202 of 2021)

2.E.Jean Prabhu

... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records pertaining to the case in Crime No.202 of 2021, Thoothukudi South Police Station, Thoothukudi District and quash the same as against the petitioners.

For Petitioners : Mr.R.Anand
For Respondents : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor for R1.
R2 - Party-in-person

Crl.O.P(MD)No.12748 of 2021:-

1.Abdon @ Ravi Abdon
2.Leema

... Petitioners

Vs.

1.The State of Tamilnadu
Rep. by the the Sub Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.
(Crime No.8 of 2019)

2.E.Jean Prabhu

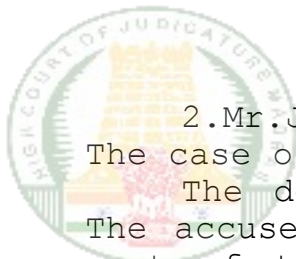
... Respondents

Prayer: This Criminal Original Petition is filed under Section 482 of Cr.P.C., to call for the entire records relating to the impugned charge sheet in C.C.No.5 of 2021 pending on the file learned Judicial Magistrate No.I, Thoothukudi and quash the same so far as the petitioners 1 and 2 are concerned.

For Petitioners : Mr.K.Vamanan
For Respondents : Mr.E.Antony Sahaya Prabahar,
Addl. Public Prosecutor for R1.
R2 - Party-in-person

COMMON ORDER

Crl.O.P.(MD)Nos.11751 and Crl.O.P.(MD)No.12748 of 2021 have been filed for quashing the proceedings in C.C.No.5 of 2021 on the file of the Judicial Magistrate No.I, Thoothukudi. Crl.O.P.(MD) No.11755 of 2021 has been filed to quash the impugned FIR in Crime No.202 of 2021 registered on the file of the Inspector of Police, Thoothukudi South Police Station, Thoothukudi.

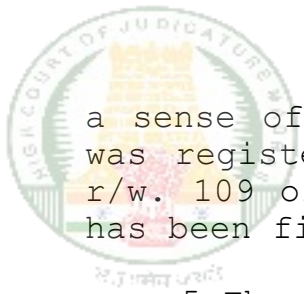


2.Mr.Jean Prabhu is the defacto complainant in both the cases. The case of the prosecution in C.C.No.5 of 2021 is as follows:-

The defacto complainant is working as an interior architect. The accused are closely related to him. A2/Leema is the maternal aunt of the defacto complainant. A1/Abdon @ Ravi Abdon is her husband. Matilda is another maternal aunt of the defacto complainant. A3/Selvakumar is her son-in-law while A4 is her son and A5 is her daughter. There is a civil dispute between accused on the one hand and the defacto complainant on the other regarding partition of ancestral property. According to the defacto complainant, the accused have committed encroachment. He had sent individual communications to each of the accused demanding explanation. The accused failed to respond. A4 is working as Environment Engineer in the Tamil Nadu Pollution Control Board. A5 is residing at Nungambakkam, Chennai. According, to the defacto complainant, whenever A4 and A5 visit Thoothukudi, they joined hands with A3/Selvakumar and held out threats against the defacto complainant. The names of A1 and A2 were invoked. The threats turned out to be true. On 29.09.2018 at around 08.00 P.M after confirming that the defacto complainant was not at home and that LW2/Sobiha and LW3/Ezlibathrani, wife and mother of the defacto complainant respectively were alone, A1/Abdon @ Ravi Abdon and A2/Leema at the instance of the A4 and A5 came to the house of the defacto complainant and called them out by using abusive language. They held out dire threats. They banged the door of the house. LW2 and LW3 got terrified and out of panic called the defacto complainant on his mobile and apprised him of the situation. Thereupon, the defacto complainant rushed back home. In the meanwhile, A1 to A3 left the place after repeating their threats.

3.Based on this complaint of the defacto complainant, Crime No.8 of 2019 was registered. Investigation was taken up and final report was filed. Cognizance of the offences under Sections 294(b), 506(i) and 109 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002 was taken. Summons were issued to the accused. The case was taken on file by the Judicial Magistrate No.I, Thoothukudi in in C.C.No.5 of 2021. To quash the said proceedings, A4 and A5 filed Crl.O.P.(MD)No.11751, while A1 and A2 filed Crl.O.P.(MD)No.12748 of 2021.

4.Crime No.202 of 2021 relates to an occurrence said to have taken place on 25.12.2020. According to the defacto complainant, when he was inside in his house, he heard a sudden high blasting sound near his house. As a result of the high vibration, his house almost shook. A perusal of the CCTV footage indicated that his aunt/Matilda, Selvakumar and two others came out of their houses at around 08.00 pm and directed the children to burst crackers in front of the defacto complainant's house. As a result, a minor damage was also caused to his sister's house bearing Door No.88E. According to the defacto complainant, such intentional bursting of crackers was done in front of his house in order to cause panic and



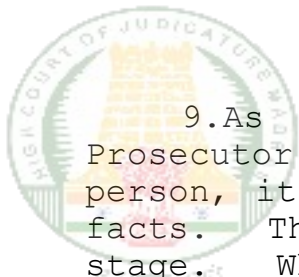
a sense of terror. Based on this complaint, Crime No.202 of 2021 was registered for the offences under Section 285, 427 and 506(i) r/w. 109 of IPC. To quash the same, Crl.O.P.(MD)No.11755 of 2021 has been filed.

5.The learned counsel appearing for the accused in both the cases reiterated all the contentions set out in the memorandum of grounds. They also filed notes of arguments. According to them, a pathway dispute among family members has been given a criminal colour by the defacto complainant. They submitted that quashing the impugned prosecution alone would serve ends of justice.

6.Per contra, the learned Additional Public Prosecutor appearing for the State submitted that the defacto complainant had specifically implicated all the petitioners herein and that therefore, no case for quashing has been made out.

7.The defacto complainant also reiterated the version projected in the aforesaid two cases. His contention is that the accused are harassing him and his family members ; the allegations made by him clearly constitute the offences in question. He reminded the Court that the jurisdiction under Section 482 of CrPC must be sparingly exercised. While exercising inherent powers of this Court, the genuineness or the veracity of the prosecution version cannot be gone into. He called upon this Court to relegate the accused to the trial Court to face full-fledged trial. The defacto complainant also sent his written notes through mail, in which he drew the attention of this Court to the conduct of the accused. He insisted that the learned counsel appearing for the accused have not correctly presented the facts.

8.I carefully considered the rival contentions and went through the materials on record. As already noted, the parties are close relatives. A2/Leema is none other than the maternal aunt of the defacto complainant. A2/Leema is a house wife who was aged around 65 years at the time of occurrence. A1, her husband, is a retired head of Botany department in Madras Presidency College. He was aged about 70 years during the relevant time. The specific contention of the learned counsel for A1 and A2 is that since there was a pathway dispute between the two parties, A1 and A2, who are residing in Chennai wanted to resolve the issue. With this object in mind, A1 and A2 along with A3 had gone to the house of the defacto complainant. They admit that they had knocked the door but none attended. Probably the inmates (LW.2 and LW.3) were not obliged to fulfil the biblical guarantee "knock and it shall be opened". Since their visit did not prove fruitful, A1 and A2 returned soon thereafter. This innocuous visit made with the noble object of resolving the familial dispute has been given an unfamiliar twist, is the contention of the learned counsel appearing for A1 and A2.



9.As rightly pointed out by the learned Additional Public Prosecutor as well as the defacto complainant, who appeared in person, it may not be proper for this Court to go into contentious facts. The veracity of the allegations cannot be tested at this stage. What has to be seen is whether the offences for which cognizance has been taken have been made out or not. The accused in C.C.No.5 of 2021 stand charged for having committed the offences under Sections 294(b), 506(i) and 109 of IPC and Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002.

10.Section 294(b) of IPC will be attracted if to the annoyance of others, one sings, recites or utters any obscene song, ballad or words, in or near any public place. Admittedly even according to the prosecution, the occurrence had taken place right outside the house of the defacto complainant. There is not even a single independent witness. The defacto complainant is LW1. His wife and his mother are LW2 and LW3. LW4 is a hearsay witness. Section 294 (b) of IPC will be attracted, only if the obscene word had been uttered in a public place. When there is not even a single member of the general public who is said to have witnessed the occurrence, the offence under Section 294(b) of IPC will obviously not be attracted.

11.Section 506(1) of IPC would also not be attracted in this case. Because the persons, who came are A1 and A2. Both are senior citizens. They had only knocked the door. It is not the case of the prosecution that there was any physical scuffle or assault. No person suffered any injury. It is improbable that A1 and A2 could have uttered the words attributed to them by the defacto complainant. The second petitioner is a woman and therefore, Section 4 of Tamil Nadu Prohibition of Harassment of Women Act, 2002, could not have been invoked against her. A4 and A5 were not even present in the scene of occurrence. That is why, to rope them in, Section 109 IPC has been invoked. When the primary offences are not made out, Section 109 of IPC cannot stand independently.

12.I must also note that Crime No.8 of 2019 was registered only on 04.01.2019, even though the occurrence is said to have taken place on 20.09.2018. Of course, the defacto complainant would state that the earlier complaints given by him were not registered and only CSR was issued. Even the earliest complaint was not given immediately after the occurrence. It was given only on 23.09.2018.

13.I am satisfied that a pathway dispute that is purely civil in nature has been given a criminal colour. Nothing untoward happened. A1 and A2 wanted to resolve the outstanding differences among the family members. Their gesture of reaching out appears to have been misconstrued. I come to the conclusion that continuance of the impugned proceedings would definitely constitute an abuse of legal process. Therefore, I have no hesitation to quash the proceedings in C.C.No.5 of 2021 on the file Judicial



Magistrate No.I, Thoothukudi. Crl.O.P.(MD)Nos.11751 and 12748 of 2021 are allowed. Though A3/Selvakumar has not filed any independent criminal original petition, the benefit of this order will also enure in his favour.

14.As regards the other criminal original petition, bursting of firecrackers by the children has given rise to registration of Crime No.202 of 2021. The occurrence date is significant. The parties are Christians. Christmas is an occasion for celebration. It is not necessary that firecrackers should be burst only on the occasion of Diwali. It can be burst on any festive occasion. Even according to the defacto complainant, some children burst the crackers. He would of course allege that they did so at the instance of the accused. In my view, this is a case in which Section 95 of IPC can be pressed into service. Section 95 of IPC states that nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm. Acts causing only slight harm ought not to give rise to registration of FIRs. In this case, the harm is so slight. I can understand the annoyance which the bursting of crackers caused to the defacto complainant. Bearing in mind the biblical diktat "be kind and compassionate to one another, forgiving each other, just as in Christ God forgave you (Ephesians 4:32)", the defacto complainant should have been magnanimous to forgive such minor lapses. Invoking Section 95 of IPC, I quash Crime No.202 of 2021. Crl.O.P.(MD) No.11755 of 2021 is allowed. Consequently, connected miscellaneous petitions are closed.

15.Taking note of the sensitive nature of the defacto complainant, the accused are directed to keep away from the defacto complainant and his family. No firecrackers shall be burst outside the house of the defacto complainant. The accused shall not exult over the outcome of these proceedings. They shall not cause any kind of annoyance to the defacto complainant and his family members. The pending dispute shall be resolved only through due process of law.

Sd/-

Assistant Registrar (CS-II)

// True Copy //

/ /2022

Sub Assistant Registrar(CS)

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Note : In view of the present lock down owing to COVID-19 pandemic, a web copy of the order may be utilized for official purposes, but, ensuring that the copy of the order that is presented is the correct copy, shall be the responsibility of the advocate/litigant



To:

1.The Judicial Magistrate No.I, Thoothukudi.

2.The Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.

3.The Sub Inspector of Police,
Thoothukudi South Police Station,
Thoothukudi District.

4.The Additional Public Prosecutore,
Madurai Bench of Madras High Court, Madurai.

+2 CC to M/s.E.JEEN PRABU, Advocate (SR-39445,SR-39444[F] dated
20/12/2021)

Crl.O.P(MD)Nos.11751, 11755
and 12748 of 2021
16.12.2021

RK(10.01.2022) 7P 7C